

REMARKS

Reconsideration of the present application, as amended, is respectfully requested.

TELEPHONE INTERVIEW

Applicants' undersigned attorney appreciates the telephone interview that was conducted with the Examiner on July 27, 2007. During that interview, it was proposed that the transitional phrase for the uniform film layer be amended to "consisting essentially of" to more clearly distinguish the cited reference. The Examiner indicated a willingness to consider this amendment.

AMENDMENTS TO THE CLAIMS

Claims 46-50, 57 and 64 are amended to more particularly set forth the invention, and without prejudice to further prosecution of the pre-amendment scope of these claims. Claims 51-54 are newly cancelled. New claim 70 is added to more particularly set forth the invention.

Claim 46 is amended to replace the transitional phrase "comprises" with "consisting essentially of" so that the "delivery device" now "consists essentially of a single uniform film layer..." The weight percent ranges for polyvinyl pyrrolidone and polyethylene glycol are removed and moved to dependent claims as noted below.

Claim 47 is amended to specify that the polyvinyl pyrrolidone is present in the amounts specified by the provided Markush group. These amounts are supported, as confirmed by the Examiner, by Examples 1-8 and tabulated by Tables 1 and 2.

Claim 48 is amended to reflect a continuous range for polyvinyl pyrrolidone as previously recited by claim 46. It is submitted that this continuous range is inherent in the percentages provided by the Examples, for the reasons discussed in greater detail below.

Claim 49 is amended to further comprise additional compounds, in the specified weight percentages, as described by Tables 1 and 2 of the specification, in the form of a Markush group. For example, the lactic acid at 4.0 wt% is found in Table 1, and the lactic acid at 2.0 wt% is found in Table 2.

Claim 50 is amended to reflect a continuous range for polyethylene glycol as previously recited by claim 46. It is submitted that this continuous range is inherent in the percentages provided by the Examples, for the reasons discussed in greater detail below.

Claim 57 is amended to correct a minor informality after "cosmetic agent," for clarity.

Claim 64 is amended to correct an informality pointed out by the Examiner in the numerical range.

New claim 70 recites that the "single uniform film layer is 15 mils thick," as supported by the examples of the specification.

**THE CLAIMS ARE ENABLED UNDER
35 U.S.C. 112, FIRST PARAGRAPH**

At page 2 of the Office Action, claims 46-69 are rejected under 35 U.S.C. 112, first paragraph, for allegedly failing to comply with the written description requirement. The Examiner takes the position that because the ranges specified in claim 46 are not expressly stated in the specification, they represent impermissible new matter.

Applicants respectfully disagree. These ranges have now been moved to dependent claims 48 and 50. The Examiner is respectfully referred to the Manual of Patent Examining Procedure ("MPEP") PDF version, v8 Rev.5 (Aug. 2006) Section 2163.05, page 183, part III, discussing *In re Wertheim* 541 F.2d, 257, 191 USPQ 90 (CCPA 1976), as follows:

With respect to changing numerical range limitations, the analysis must take into account which ranges one skilled in the art would consider inherently supported by the discussion in the original disclosure. In the decision in *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), the ranges described in the original specification included a range of "25%- 60%" and specific examples of "36%" and "50%." A corresponding new claim limitation to "at least 35%" did not meet the description requirement because the phrase "at least" had no upper limit and caused the claim to read literally on embodiments outside the "25% to 60%" range, however a limitation to "between 35% and 60%" did meet the description requirement. [Underline added for emphasis].

It is submitted that here, as for the situation in *In re Wertheim*, *Id.*, one skilled in the art would consider the ranges of claims 48 and 50 to be inherently supported by the provided examples.

At page 3 of the Office Action, the Examiner has also pointed out an informality in claim 64, where the upper range of "5" should be "15". The Examiner's attention to this point is appreciated.

In the text bridging pages 3-4, the Examiner has questioned support for claims 47-54. It is submitted that the amended claims obviate this ground of rejection by placing the specific percentages of certain components from Examples 1-8 into claim 49 as a Markush group.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

**THE CLAIMS ARE DEFINITE UNDER
35 U.S.C. 112, SECOND PARAGRAPH**

At page 4, claims 48-69 are rejected as allegedly indefinite for various reasons.

Applicants respectfully disagree. The claims have been amended, without prejudice, and in the interest of expeditious prosecution, to more clearly state that which Applicants consider to be the invention. Thus, dependent claims further limit antecedent claims or state that additional elements are further comprised. All tradenames have been removed from the pending claims.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

THE CLAIMED INVENTION IS NONOBVIOUS UNDER 35 U.S.C. 103(a)

At page 5 of the Office Action, claims 46 and 55-69 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Biederman et al. (US 5,980,921).

The Examiner states that,

Regarding the percent amounts of the components, there is no demonstration that these amounts in combination provides unexpected results to the compositions when a range is claimed indicating variable amounts that can be optimized for the desired use. The cleansing formulation is applied to the skin and the application may be in a single layer. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the composition of Biederman to the skin as a cleansing composition. One having ordinary skill in the art would have been motivated to apply the composition to the skin in a single layer with the expectation of uniform/efficient cleaning.

Applicants respectfully disagree. As noted by the Examiner at the bottom of page 6 of the Office Action, "Biederman does not disclose a single layer device." Claim 46 and the claims that depend from claim 46 require a single layer device. It is submitted that nowhere does the record show any reference that teaches or suggests a thin film composition or device according to claim 46 for use in commerce. Claim 46 describes a device that dissolves on wetted skin and that is a film before such application, thus clearly distinguishing a film that may form on the skin of one using any other type of device. The Examiner has stated that it would have been obvious

to prepare the claimed device based on Beiderman, but Beiderman teaches, *inter alia*, a toilet bar. It is submitted that nowhere does Biederman teach, suggest or even recognize a need for a cleansing composition in the form of a thin film, or teach or suggest which materials should be employed to prepare such a thin film. As the Examiner can appreciate, the law requires that each claim must be examined as a whole. Taken in its entirety, it is submitted that claim 46 describes something never before taught or suggested by the art of record.

The Examiner further states that the surface of the Biederman toilet bar is a film according to claim 46. Claim 46 as pending retains "comprising" for the formulation of the "uniform mixture" but particularly recites that the "delivery device consists essentially of a single uniform film layer," thus clearly distinguishing a hypothetical film on the surface of the Biederman toilet bar.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

This response is being filed with a Petition for a one-month extension of time, and the required petition fee. No fee is believed to be due for additional claims. If, on the other hand, it is determined that any fees are due or any overpayment has been made, the Commissioner is hereby authorized to debit or credit such sum to deposit account 02-2275. Pursuant to 37 C.F.R. 1.136(a)(3), please treat this and any concurrent or future reply in this application that requires a petition for an extension of time for its timely submission as incorporating a petition for extension of time for the appropriate length of time. The fee associated therewith is to be charged to Deposit Account No. 02-2275.


In view of the actions taken and arguments presented, it is respectfully submitted that each of the matters raised by the Examiner has been addressed by the present amendment and that the present application is now in condition for allowance.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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